

**§ 105-242. Warrants for collection of taxes; garnishment and attachment; certificate or judgment for taxes.**

(a) Levy and Sale. – If a taxpayer does not pay a tax within 30 days after it is collectible under G.S. 105-241.22, the Secretary may take either of the following actions to collect the tax:

- (1) Issue a warrant directing the sheriff of any county of the State to levy upon and sell the real and personal property of the taxpayer found within the county for the payment of the tax and the cost of executing the warrant and to return to the Secretary the money collected, within a time to be specified in the warrant but not less than 60 days from the date of the warrant. The procedure for executions issued against property upon judgments of a court apply to executions under a warrant.
- (2) Issue a warrant to any revenue officer or other employee of the Department charged with the duty to collect taxes, commanding the officer or employee to levy upon and sell the taxpayer's personal property found within the State for the payment of the tax. Except as otherwise provided in this subdivision, the levy upon and sale of personal property by an officer or employee of the Department is subject to and must be conducted in accordance with the laws governing the sale of property levied upon under execution. The Secretary may sell the property levied upon in any county and may advertise the sale in any reasonable manner and for any reasonable period of time to produce an adequate bid for the property. Levy and sale fees, plus actual advertising costs, must be added to and collected in the same manner as taxes. The Secretary is not required to file a report of sale with the clerk of superior court, if the sale is otherwise publicly reported.

(b) Attachment and Garnishment. – Intangible property that belongs to a taxpayer, is owed to a taxpayer, or has been transferred by a taxpayer under circumstances that would permit it to be levied upon if it were tangible property is subject to attachment and garnishment in payment of a tax that is due from the taxpayer and is collectible under G.S. 105-241.22. Intangible personal property includes bank deposits, rent, salaries, wages, property held in the Escheat Fund, and any other property incapable of manual levy or delivery. G.S. 105-242.1 sets out the procedure for attachment and garnishment of intangible property.

A person who is in possession of intangible property that is subject to attachment and garnishment is the garnishee and is liable for the amount the taxpayer owes. The liability applies only to the amount of the taxpayer's property in the garnishee's possession, reduced by any amount the taxpayer owes the garnishee.

The Secretary may submit to a financial institution, as defined in G.S. 53B-2, information that identifies a taxpayer who owes a tax debt that is collectible under G.S. 105-241.22 and the amount of the debt. The Secretary may submit the information on a quarterly basis or, with the agreement of the financial institution, on a more frequent basis. A financial institution that receives the information must determine the amount, if any, of intangible property it holds that belongs to the taxpayer and must inform the Secretary of its determination. The Secretary must reimburse a financial institution for its costs in providing the information, not to exceed the amount payable to the financial institution under G.S. 110-139 for providing information for use in locating a noncustodial parent.

No more than ten percent (10%) of a taxpayer's wages or salary is subject to attachment and garnishment. The wages or salary of an employee of the United States, the State, or a political subdivision of the State are subject to attachment and garnishment.

(c) Certificate of Tax Liability. – The Department may file a certificate of tax liability to collect a tax that is owed by a taxpayer and is collectible under G.S. 105-241.22. A

certificate of tax liability must state the taxpayer's name and the type and amount of tax owed. If the taxpayer resides in this State or has property in this State, the Department must file the certificate of tax liability with the clerk of the superior court of a county in which the taxpayer resides or has property. If the taxpayer does not reside in this State or have property in this State, the Department must file the certificate of tax liability in Wake County.

The clerk of court must record a certificate of tax liability in the same manner as a judgment. A recorded certificate of tax liability is considered a judgment and is enforceable in the same manner as other judgments. The legal rate of interest set in G.S. 24-1 applies to the principal amount of tax stated on the certificate of tax liability. The tax stated on a certificate of tax liability is a lien on real and personal property from the date the certificate is recorded.

A certificate of tax liability is enforceable for a period of 10 years from the date it is recorded. If the certificate is not satisfied within this period, the remaining liability of the taxpayer is abated and the Department must cancel the certificate. An execution sale initiated before the end of the 10-year period may be completed after the end of this period, regardless of whether resales are required because of the posting of increased bids. The Secretary may accept tax payments made after a certificate has expired, regardless of whether any collection actions were taken before the certificate expired. A taxpayer may waive the 10-year period for enforcement of the certificate for either a definite or an indefinite time.

The 10-year period in which a certificate of tax liability is enforceable is tolled during the following periods:

- (1) While the taxpayer is absent from the State. The period is tolled during the taxpayer's absence plus one year after the taxpayer returns.
- (2) Upon the death of the taxpayer. The period is tolled while the taxpayer's estate is administered plus one year after the estate is closed.
- (3) While an action is pending to set aside a conveyance made by the taxpayer as a fraudulent conveyance.
- (4) While an insolvency proceeding against the taxpayer is pending.
- (5) During the period of any statutory or judicial bar to the enforcement of the certificate.
- (6) The period for which a taxpayer has waived the 10-year period.

(c1) Release of Lien. – The Secretary shall release the State tax lien on a taxpayer's property if the liability for which the lien attached has been satisfied. The Secretary may release the State tax lien on all or part of a taxpayer's property if one or more of the following findings is made:

- (1) The liability for which the lien attached has become unenforceable due to lapse of time.
- (2) The lien is creating an economic hardship due to the financial condition of the taxpayer.
- (3) The fair market value of the property exceeds the tax liability and release of the lien on part of the property would not hinder collection of the liability.
- (4) Release of the lien will probably facilitate, expedite, or enhance the State's chances for ultimately collecting a tax due the State.

If the Secretary of Revenue shall find that it will be for the best interest of the State in that it will probably facilitate, expedite or enhance the State's chances for ultimately collecting a tax due the State, he may authorize a deputy or agent to release the lien of a State tax judgment or certificate of tax liability upon a specified parcel or parcels of real estate by noting such release upon the judgment docket where such certificate of tax liability is recorded. Such release shall be signed by the deputy or agent and witnessed

by the clerk of court or his deputy or assistant and shall be in substantially the following form: "The lien of this judgment upon (insert here a short description of the property to be released sufficient to identify it, such as reference to a particular tract described in a recorded instrument) is hereby released, but this judgment shall continue in full force and effect as to other real property to which it has heretofore attached or may hereafter attach. This \_\_\_ day of \_\_\_, \_\_\_\_

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Revenue Officer, N.C. Department of Revenue

WITNESS:

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The release shall be noted on the judgment docket only upon conditions prescribed by the Secretary and shall have effect only as to the real estate described therein and shall not affect any other rights of the State under said judgment.

(d) Remedies Cumulative. – The remedies herein given are cumulative and in addition to all other remedies provided by law for the collection of said taxes.

(e) Exempt Property. – Only the following property is exempt from levy, attachment, and garnishment under this Article:

- (1) The taxpayer's principal residence, unless the Secretary approves of the levy in writing or the Secretary finds that collection of the tax is in jeopardy.
- (2) Tangible personal property that is exempt from federal levy as provided in section 6334 of the Code.
- (3) Intangible personal property that is exempt from federal levy under section 6334 of the Code.
- (4) Ninety percent (90%) of the taxpayer's salary or wages per month.

(f) Uneconomical Levy. – The Secretary shall not levy against any property if the Secretary estimates before levy that the expenses the Department would incur in levying against the property would exceed the fair market value of the property.

(g) Erroneous Lien. – A taxpayer may appeal to the Secretary after a certificate is filed under subsection (c) of this section if the taxpayer alleges an error in the filing of the lien. The Secretary shall make a determination of such an appeal as quickly as possible. If the Secretary finds that the filing of the certificate was erroneous, the Secretary shall withdraw the lien as quickly as possible by issuing a certificate of withdrawal. (1939, c. 158, s. 913; 1941, c. 50, s. 10; 1949, c. 392, s. 6; 1951, c. 643, s. 9; 1955, c. 1285; c. 1350, s. 23; 1957, c. 1340, s. 10; 1959, c. 368; 1963, c. 1169, s. 6; 1969, c. 1071, s. 1; 1973, c. 476, s. 193; c. 1287, s. 13; 1979, c. 103, ss. 1, 2; c. 179, s. 5; 1979, 2nd Sess., c. 1085, s. 1; 1989, c. 37, s. 6; c. 580; 1991, c. 228, s. 1; 1991 (Reg. Sess., 1992), c. 1007, ss. 12, 13; 1993, c. 532, s. 5; 1997-121, s. 1; 1999-456, s. 59; 2003-349, s. 2; 2007-491, ss. 28, 29, 31; 2010-31, s. 31.8(h); 2014-3, s. 14.17.)